

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CHD CONSTRUCTION COMPANY, INC.

and

Case 6--CA--23064

CARPENTERS' DISTRICT COUNCIL OF
WESTERN PENNSYLVANIA a/w UNITED
BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA, AFL--CIO

April 15, 1991
DECISION AND ORDER

By Chairman Stephens and Members Blumenthal and Brundabaugh
Upon a charge filed by the Union on October 9, 1990, and amended on

November 20, 1990, the General Counsel of the National Labor Relations Board issued a complaint on November 21, 1990, against CHD Construction Company, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On January 30, 1991, the General Counsel filed a Motion for Summary Judgment. On February 5, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, ''all the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board.'' Further, the undisputed allegations in the Motion for Summary Judgment disclose that the General Counsel, by letter dated December 7, 1990, notified the Respondent that unless an answer was received immediately, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Respondent, a Pennsylvania corporation with its principal office and place of business in Pittsburgh, Pennsylvania, and a construction site located at the Oakmont Water Treatment Center in Oakmont, Pennsylvania has been engaged as a contractor in the construction industry constructing commercial, industrial, and/or office facilities. During the 12-month period preceding issuance of the complaint the Respondent purchased and received at its Pittsburgh, Pennsylvania facility and Pennsylvania jobsites products, goods, and materials valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and

that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

Since on or about February 21, 1989, the Union has been recognized by the Respondent as the exclusive bargaining representative of the following appropriate unit:

All full-time and regular part-time carpenter journeymen, foremen, general foremen and apprentices employed by the Respondent in the following counties in the Commonwealth of Pennsylvania: Allegheny, Armstrong, Beaver, Butler, Fayette, Greene, Lawrence, Washington and Westmoreland; excluding guards, professional employees and supervisors as defined in the Act.

Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from June 1, 1990, until May 31, 1994. The Respondent's collective-bargaining agreement with the Union includes provisions which obligate the Respondent to remit to the Union dues and fringe benefit contributions deducted from the employees' pay. Since on about March 31, 1990, the Respondent has failed to remit to the Union the dues and fringe benefit contributions deducted from the pay of its unit employees at the Oakmont jobsite. On various occasions since on or about July 1990, the Union has requested that the Respondent remit these dues and fringe benefit contributions. The Respondent has failed and refused to respond to the Union's request. We find that by this conduct, the Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the representative of its employees, and that the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

Conclusions of Law

By failing and refusing, beginning March 31, 1990, and continuing to date, to remit to the Union the dues and fringe benefit contributions the Respondent deducted from the pay of its unit employees at the Oakmont jobsite, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to remit to the Union the dues it deducted from the pay of its unit employees at the Oakmont jobsite since March 31, 1990, with interest to be computed in the manner prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987). In addition, the Respondent shall remit to the Union the fringe benefit contributions it deducted from the pay of its unit employees at the Oakmont jobsite since March 31, 1990, with any additional amounts applicable to such payments to be computed in accordance with the Board's decision in Merryweather Optical Co., 240 NLRB 1213 (1979). The Respondent shall also reimburse its unit employees at the Oakmont jobsite for any expenses resulting from its failure to make its contractually required fringe benefit remittances to the Union in the manner set forth in Kraft Plumbing & Heating, 252 NLRB 891 (1980), enfd. 661 F.2d 940 (9th Cir. 1981).

ORDER

The National Labor Relations Board orders that the Respondent, CHD Construction Company, Inc., Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Carpenters' District Council of Western Pennsylvania a/w United Brotherhood of Carpenters and Joiners of America, AFL--CIO, during the term of the collective-bargaining agreement by failing to remit to the Union the dues and fringe benefit contributions it deducted from the pay of its unit employees at the Oakmont jobsite since March 31, 1990.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Remit to the Union all dues and fringe benefit contributions required by the collective-bargaining agreement with the Union that it deducted from the pay of its unit employees at the Oakmont jobsite since March 31, 1990.

(b) Post at its facility in Pittsburgh, Pennsylvania, and at its Oakmont jobsite copies of the attached notice marked "'Appendix.'"¹ Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of dues and backpay contributions due under the terms of this Order.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. April 15, 1991

James M. Stephens, Chairman

Dennis M. Devaney, Member

John N. Raudabaugh, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with Carpenters' District Council of Western Pennsylvania a/w United Brotherhood of Carpenters and Joiners of America, AFL--CIO by failing to remit to the Union dues and fringe benefit contributions we deducted from your pay since March 31, 1990.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL remit to the Union the dues and fringe benefit contributions we deducted from your pay since March 31, 1990.

WE WILL reimburse you for any expenses ensuing from our failure to remit to the Union fringe benefit contributions we deducted from your pay pursuant to our collective-bargaining agreement with the Union.

CHD CONSTRUCTION COMPANY, INC.
(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 1000 Liberty Avenue, Room 1501, Pittsburgh, Pennsylvania 15222-4173, Telephone 412--644--2969.